

**THE COMMERCIAL LAW LEAGUE OF AMERICA**  
**FAIR DEBT COLLECTION PRACTICES ACT**  
**WHITE PAPER ISSUES**

Debt Collection Workshop, P074805

Submitted to  
The Federal Trade Commission  
Bureau of Consumer Protection

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**INTRODUCTION**

The Commercial Law League of America (“CLLA” or “League”) is a 112-year-old national organization of attorneys, commercial collection agencies, and other experts in credit and finance actively engaged in the fields of commercial law and bankruptcy and reorganization. The CLLA is the publisher of the award-winning Commercial Law Journal, and a leading provider of legal education to collection attorneys and agencies throughout the country. It has long been associated with the representation of creditor interests, while at the same time seeking fair, equitable, and efficient administration of commercial and bankruptcy cases for all parties-in-interest. The League has been firmly committed to policing its own industry and has regularly provided articles and presentations to its members on consumer and commercial law issues.

Through its representatives, the CLLA has testified before Congress on numerous occasions, and the League has provided expert testimony in the fields of collections and bankruptcy and reorganization. The League has appeared as an amicus curiae before the United States Supreme Court and multiple federal appeals courts on issues ranging from FDCPA to TILA to bankruptcy. The vast majority of the League’s membership represent credit grantors in collection disputes.

The following represents the CLLA’s initial submission in response to the Federal Trade Commission’s (FTC) request for comments, published on the FTC website April 23, 2007. The CLLA shall supplement these comments with additional, more comprehensive academic paper(s) regarding consumer debt collection issues in the future, prior to September 7<sup>th</sup>.

**ISSUES**

**1. Voice Mail**

When the FDCPA was enacted in 1977, few debtors had answering machines, and none had voice mail as we now know it. As answering machines and then voice mail came into widespread use the collection industry developed standards that were geared to protect consumer privacy rights. Three cases, *Joseph v. J.J. Mac Intyre Cos., LLC*, 281

F. Supp. 2d 1156 (N.D. Cal. 2003), *Hosseinzadeh v. M.R.S. Assocs., Inc.*, 387 F. Supp. 2d 1104 (C.D. Cal. 2005), and *Foti v. NCO Financial Systems*, 2006 U.S. Dist. LEXIS 13857 (SDNY 2006), have rejected the industry standards, thereby impairing consumer privacy rights by:

- a. mandating disclosure of the name of a collector's employer (and not just the collector's identity); and
- b. requiring the Section 807(11) ("mini-Miranda") disclosures when a collector leaves an answering machine or voice mail message.

## **2. Cell Phones**

When the FDCPA was enacted in 1977, modern cell phone technology did not exist. Car phones were a luxury item, and Congress could not have contemplated the current cell phone culture. Approximately 20% of the country has abandoned land lines to use their cell phones as both home and mobile numbers. Industry experience suggests that in the consumer debtor population it may be closer to one out of three who has only a cell phone.

Cell phones present some challenges to the collection industry for which there are no perfect solutions under the Act. Because consumers both travel with their cell phones and keep the same numbers when moving across the country there is a very real danger that collectors will call at what they believe to be a permissible time of day (based upon the area code dialed) only to discover that the consumer is in a time zone in which the call is received before 8:00 a.m. or after 9:00 p.m.

## **3. Caller ID**

The League agrees that it is not permissible for a collector to use a false Caller ID, as such conduct would run afoul of Section 807(10). However, two issues that are of concern to the League are:

- a. can Caller ID be blocked; and
- b. must the Caller ID disclose that the call is from a debt collector?

These may seem to be silly questions, but at least one court has suggested that the Caller ID message must comply with Section 807(11), and that Section 806(6) applies to Caller ID. See *Knoll v. IntelliRisk Management Corporation*, 2006 U.S. Dist. LEXIS 77467 (D. Minn. October 16, 2006). Given the 15-character limit on Caller ID, this is simply unrealistic.

## **4. Pagers**

Pagers provide a mechanism for consumers to be contacted and to leave a digital call-back request. However, the League is concerned about whether Sections 806(6) and 807(11) apply to pager calls.





